State of Rhode Island and Providence Plantations
RHODE ISLAND BOARD OF EDUCATION
255 Westminster Street
Providence, Rhode Island 02903-3400

Enclosure 6b3
December 4, 2018

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TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation on the matter of DCYF v. Providence School Department

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The Appeals Committee of the Council on Elementary and Secondary Education met on November 5, 2018, to hear oral argument on the appeal of the following Commissioner decision:

DCYF v. Providence School Department

RECOMMENDATION: THAT, in the matter of DCYF v. Providence School Department, the Commissioner's decision is affirmed, as presented.

STATE OF RHODE ISLAND **COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION**

DEPARTMENT OF CHILDREN YOUTH AND FAMILIES	:
	:
vs.	:
	:
PROVIDENCE PUBLIC SCHOOL DEPARTMENT	:

In re Student J. Doe

DECISION

This is an appeal by the Cranston Public School Department ("CSD") from the decision of the Commissioner of Education ("Commissioner"), dated June 22, 2018, whereby the Commissioner ordered that the Rhode Island Department of Children, Youth, and Families ("DCYF") create an educational stability plan and perform a "best interest" determination for student J. Doe ("Doe"), and further ordered that if it is in the child's best interest to remain at the Bradley School in Providence, RI, then the CSD remains responsible for providing a free, appropriate public education under the Individuals with Disabilities Education Act.

The pertinent facts were found by the Commissioner as follows. Doe was placed in foster care with relatives in Cranston, RI on October 14, 2016. On September 1, 2017, after some time enrolled in the CSD, CSD placed Doe at the Bradley School in Providence, RI ("Bradley") in accordance with an individualized education plan ("IEP"). *See* 20 U.S.C. §1414(d). Doe's relatives moved Doe to Providence, RI on November 29, 2017. DCYF failed to make a "best interest" determination in accordance with the Every Student Succeeds Act ("ESSA"). *See* 20 U.S.C. §6311(g)(E)(1) (hereinafter a "best interest determination"). However, Doe remains enrolled at Bradley. On February 16, 2018 DCYF filed a petition for interim protective relief

asking the Commissioner to determine whether the Providence Public School Department ("PSD") became responsible for providing a free, appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA"), or whether CSD remained responsible under ESSA.

DCYF argued that a best interest determination under ESSA is not required by a move in residence, only by a change in the identity of foster care providers. DCYF contends that non-regulatory federal guidance clarifies that this is the correct interpretation of the ESSA provisions. *See* Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care (June 23, 2016) at 11. PSD did not respond to the DCYF petition, and CSD relied upon the arguments presented by DCYF to claim that CSD was no longer responsible for Doe's education.

In a decision dated June 22, 2018 (the "Decision"), the Commissioner referred to a recent decision that dealt with the question of whether a change in residency requires DCYF to perform a best interest determination. *See* DCYF v. North Kingstown (In re Student C. Doe), RIDE No. 18-017 A (March 9, 2018). Noting the different set of facts presented in this matter, the Commissioner found that the same legal conclusion must be reached. Therefore, the Commissioner determined that DCYF must complete an educational stability plan, including a best interest determination under ESSA. Presuming the educational stability plan would likely keep Doe enrolled at Bradley, CSD was ordered to continue providing a FAPE.

CSD appealed contending that the Commissioner erred by finding that ESSA's best interest determination must be conducted after every foster child's change in residence, and asked us to overturn this determination and find further that state law residency applies and CSD is no longer responsible for Doe's education. Citing the burden placed on DCYF by the ESSA provisions, DCYF responded in support of CSD's appeal limited to the issue of whether ESSA requires a best interest determination for a change in residence. PSD opposed CSD's appeal, and

argues that the decision of the Commissioner is proper and should be upheld. We have reviewed the record, the party's briefs, and considered the oral argument presented. We find that we have no grounds to overturn the decision of the Commissioner the pertinent standard of review.

We are mindful of the standard of review for appeals brought to the Council on Elementary and Secondary Education ("Council"), which is limited to whether the Commissioner's decision is "patently arbitrary, discriminatory, or unfair." Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (R.I. 1975). Like the decision of the Commissioner below, we reviewed the arguments related to the need to make a best interest determination presented by CSD and DCYF when presented with them by DCYF in their appeal of the decision of the Commissioner in *DCYF v. North Kingstown (In re Student C. Doe)*. RIDE No. 18-017 A (March 9, 2018). As the Decision relied upon and incorporated legal analysis and conclusion in a parallel matter, so too do we reference and incorporate our own analysis in the decision of the Council on Elementary and Secondary Education in that matter. DCYF v. North Kingstown School Department (In re C. Doe), Decision of the Council on Elementary and Secondary Education at pp. 3-4. As we detailed in that decision, the plain meaning of the statutory language of ESSA as well as the non-regulatory guidance associated with ESSA both require a best interest determination whenever there is a change in residence. Id. at pp. 3-4. Therefore, we once again have not been provided with any grounds to overturn or modify the Decision related to performance of a best interest determination and must once again uphold that aspect of the order.

Unique in the current matter, we then look at the second aspect of the Decision ordering CSD to continue its responsibilities under the IDEA and provide Doe with a FAPE. The Decision correctly noted that CSD designed the relevant IEP which placed Doe at Bradley. Decision at 6. CSD carried out their responsibilities under the IDEA sending Doe to Bradley, and now Bradley

is Doe's school of origin under ESSA. *See* 20 U.S.C. §6311(g)(E)(1). Clearly, ESSA's provisions require Doe remain at Bradley pending the outcome of a best interest determination. The Commissioner further correctly noted that the "stay put" doctrine under the IDEA would likewise require Doe remain at Bradley in the event of a contrary best interest determination. Decision at 6 (Footnote No. 6) pending adjudication of that determination. Here again there are no grounds to upset the Decision that CSD remain responsible for providing Doe with a FAPE.

No part of the Commissioner's decision is "patently arbitrary, discriminatory or unfair." Altman at 405. CSD has presented no grounds to reverse or modify the Commissioner's decision under the Council's standard of review.

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on November 5, 2018.

Council on Elementary and Secondary Education,

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Daniel P. McConaghy, Chair

December 4, 2018

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Amy Beretta, Appeals Committee Chair

December 4, 2018